



Paper No. 7

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In re Application of
Deiss et al.
Application No. 09/499,553
Filed: February 7, 2000
Attorney Docket No. 99-413

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**OFFICE OF PETITIONS
A/C PATENTS**

**DECISION GRANTING
PETITION IN PART**

This is a decision on the petition filed March 23, 2000, to accord the above-identified application a filing date of February 4, 2000.

On February 7, 2000, the application was deposited.

On March 14, 2000, the Office of Initial Patent Examination mailed a Notice stating that the specification and Figures 1-2 of the drawings were missing and that a filing date would be accorded upon receipt of the missing items.

In response, the present petition was filed alleging that a specification and drawings were deposited with the original application.

The instant application is a continuation-in-part of U.S. National Phase patent application 09/234,782 which originated from PCT/US97/20989. Apparently, petitioner intended for the copy of the PCT application filed with the application to serve as the specification for the instant application even though the documentation filed on February 7, 2000, was ambiguous.¹ Due to the ambiguity, the petition fee of \$130 will not be refunded.

The petition states, "Applicant's representative respectfully requests that the filing date of February 4, 2000, be accorded." However, every other document filed by petitioner (including the new declaration and the header of the instant petition) shows the filing date as February 7, 2000. In addition, the papers in the file indicate that the original application was received on February 7, 2000. If petitioner wishes for a filing date other than February 7, 2000, then a petition under 37 CFR 1.10 should be filed.²

In view of the above, the petition is **granted** to the extent that the application will be accorded a filing date of February 7, 2000.

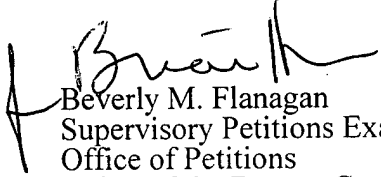
¹ In the future, if petitioner wishes to use a PCT application as a specification for another application, he may wish not to include the cover sheet and may wish to delete the heading on every page (i.e. PCT/US97/20989). The cover sheet and heading convey an intent that the pages are included solely as copies of the PCT application and not as new pages to be given a new application number. If papers are filed in the instant application with a number in the header, then the number should be the instant application number and not the number of a parent or grandparent application.

² It should be noted that the parent application issued as a patent on May 2, 2000. Therefore, the instant application, with a filing date of February 7, 2000, has copendency with the parent application.

The Notice mailed March 14, 2000, was sent in error and is hereby vacated.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of February 7, 2000, using the application papers filed on February 7, 2000, including the papers labeled as a PCT application (PCT/US97/20989).

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



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